

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., ALAN L. MILLER
JONATHAN BLAIR GARBER,
and KEVIN P. STANTON,

Plaintiffs,

V.

CITY OF EVANSTON, and
LORRAINE H. MORTON, Mayor,

Defendants.

No. 08 CV 3693

Judge Aspen

MOTION FOR RECUSAL

Plaintiffs, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., (“NRA”) JONATHAN BLAIR GARBER (“Garber”), ALAN L. MILLER (“Miller”) and KEVIN P. STANTON (“Stanton”) (collectively “Plaintiffs”), request that Judge Marvin E. Aspen recuse himself from the above captioned matter.¹ Recusal is appropriate pursuant to 28 U.S.C. §455(a) as well as §455(b)(1).

1. The present action concerns Evanston’s handgun prohibitions and Plaintiffs’ constitutional and statutory challenges to those regulations. Evanston prohibits possession of a handgun: “[n]o person shall possess, in the City of Evanston any handgun, unless the same has been rendered permanently inoperative.”

2. Judge Aspen has stated the he “*freely confess[es] to a bias* in favor of the enactment of new federal gun control legislation.” In an article published in the *Chicago Bar*

¹ The Plaintiffs in *NRA v. Morton Grove, et al.*, Case No. 08 C 3694 have simultaneously filed a Motion for Finding of Relatedness and for Reassignment and Consolidation pursuant to L.R. 40.4 with respect to this case and *National Rifle Assoc. of America, Inc., Robert Klein Engler, and Dr. Gene A. Reisinger v. Village of Oak Park and David Pope, President*, No. 08 CV 3696.

Record, Judge Aspen voiced his opinion on the need for strong legislation banning handguns. (*Id.*) Especially significant to the present case, Judge Aspen also spoke out against those who desire to obtain handguns for the defense of self and property.

3. Pursuant to §455(a), a judge should disqualify himself in any proceeding in which his impartiality might reasonably be questioned. In this case, a reasonable person would likely question Judge Aspen's impartiality. Considering Judge Aspen's published article and his admitted bias, a reasonable person could conclude that Judge Aspen favors handgun restrictions such as the one the Plaintiffs challenge here. And while Plaintiffs do not doubt that Judge Aspen is of the highest integrity, under §455(a) it is not the reality of bias or prejudice, but its appearance" that is dispositive. Here, Judge Aspen has done more than merely create an appearance of bias, he has expressly stated he has a bias in favor of federal gun control legislation.

4. For this reason, and as set forth more fully in the Memorandum of Law accompanying this motion, Judge Aspen should recuse himself from this matter.

WHEREFORE, Plaintiffs respectfully request that Judge Aspen recuse himself from this matter.

Dated: July 25, 2008

Respectfully Submitted,

**NATIONAL RIFLE ASSOCIATION
OF AMERICA, INC., JONATHAN BLAIR
GARBER, ALAN L. MILLER and
KEVIN P. STANTON,**
Plaintiffs

BY: s/ William N. Howard
One of Their Attorneys

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(Pro Hac Vice pending)

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys of record for Plaintiffs, certifies that he caused a copy of this instrument referenced herein to be delivered to LaSalle process Servers to obtain service upon the parties of record, as shown below, the **25rd** day of **July, 2008**:

City of Evanston
c/o Lorraine H. Morton, Mayor or City Clerk
2100 Ridge Ave., Rm. 2500
Evanston, IL 60201

Lorraine H. Morton, Mayor
City of Evanston
2100 Ridge Ave., Rm. 2500
Evanston, IL 60201

s/ William N. Howard

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